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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term—1961

In the Matter

of

DUTCHER CONSTRUCTION CORPORATION,

Bankrupt.

**MOTION FOR LEAVE TO FILE AN AMICUS
CURIAE BRIEF**

JOHN G. STREET, JR.

Applicant

625 Fort Worth National Bank Bldg.

Fort Worth, Texas

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MOTION FOR LEAVE TO FILE AN **AMICUS
CURIAE BRIEF**

TO THE HONORABLE SUPREME COURT OF
THE UNITED STATES:

Consent to the filing of an *amicus curiae* brief by your applicant, John G. Street, Jr., having been refused by appellee, applicant respectfully files this motion for leave to file an *amicus curiae* brief herein.

THE NATURE OF APPLICANT'S INTEREST

Applicant is the attorney for Burton B. Paddock, Trustee in Bankruptcy for Stanford Construction Company, which was adjudicated a bankrupt in Cause No. 2439 in bankruptcy, in the United States District Court for the Northern District of Texas, Fort Worth Division. Trustee Paddock took over and completed two of his Bankrupt's contracts; the Bankrupt's bonding company, New Amsterdam Casualty Company, after the adjudication of bankruptcy made payments under the payment bond to unpaid laborers and materialmen. Hon. John Ford, Referee in Bankruptcy, held that the bonding company did not have a preferred claim to the retainages and payments due under the two contracts but should share in the proceeds with the other general creditors. The bonding company's petition for review is now pending in the United States District Court for the Northern District of Texas, Fort Worth Division. When the case at bar was before the Second Circuit, applicant filed, with the permission of that Court, an *amicus curiae* brief. This Court's decision will have an important bearing on the ultimate decision of the case involving applicant's client. Applicant is vitally interested in the Court being as fully informed as possible in regard to the law involved.

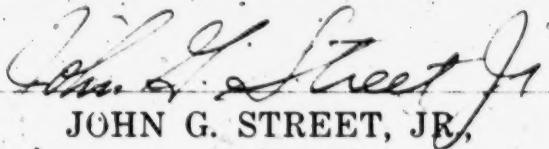
REASONS WHY APPLICANT SHOULD BE ALLOWED TO FILE AN AMICUS CURIAE BRIEF

Trustee Paddock, applicant's client, completed the two jobs which are involved in his controversy with the bonding company, and the bonding company did not do anything under its performance bond.

Your applicant believes that if he is allowed to file an *amicus curiae* brief the question of law will be more adequately presented regarding the difference between a bonding company's rights when a performance bond is involved and when a payment bond is involved. This is relevant to the disposition of this case as a payment bond is involved in this case. Since the Trustee in the case at bar did not complete the contract in question, applicant does not believe that the parties will adequately present to the Court the effect that the Court's decision would have on the situation where the Trustee completed the job, as applicant's Trustee did. This is relevant to the case at bar for a holding herein that a bonding company which makes payments under its payment bond but which does not complete the job is superior to a general creditor of the bankrupt contractor would lead to the anomalous result that when a bonding company takes over and

completes a job it is entitled to all retainages but when the Trustee does the same thing he is not so entitled.

WHEREFORE, applicant prays that he be granted permission to file an *amicus curiae* brief herein.



JOHN G. STREET, JR.,
Applicant

I hereby certify that I have served a copy of the foregoing motion on Honorable Raymond T. Miles, 942 Ellicott Square Building, Buffalo 3, New York, Appellant's counsel of record, and Honorable Mark N. Turner, 440 M & T Building, Main and Swan Streets, Buffalo 2, New York, Appellee's counsel of record, by depositing on May 26, 1962, a copy of same in a United States mail box with air mail postage prepaid, addressed to each of the above named counsel of record at the post office address set forth above.



JOHN G. STREET, JR.,
Applicant